

Article 4: City Employees' Retirement System

Division 10: Miscellaneous Provisions

*("Miscellaneous Provisions"
added 12-8-1976 by O-11964 N.S.)*

§24.1000 Retired Persons

Notwithstanding any other provision of law, no person who has been retired from the service and employment of The City of San Diego pursuant to the provisions of this article shall thereafter be paid for any service rendered as an officer or employee of said City, except as provided in Section 24.0510 or except as an officer elected by the electors of said City.

Notwithstanding the above provision, commencing on or after July 1, 1983, any person who has retired may be employed in a position requiring special skills or knowledge, as determined by the appropriate appointing authority, for a period not to exceed 90 working days in any one fiscal year and may be paid for such employment. Such employment shall not operate to reinstate the person as an active member of this System and no deductions shall be made from his or her salary as contributions thereto; nor shall said person, as a result of such limited duty, be considered an eligible employee for purposes of the City's Supplemental Pension Savings Plan or accrual of annual leave.

(Amended 5-2-1983 by O-15959 N.S.)

§24.1002 Service Credits Prior to July 1, 1954

Any member of this retirement system who has received service credits for any period of time prior to July 1, 1954, and has paid or is paying the contributions required by Section 24.1303 or Section 24.1308 of this article shall be given full service credits for such period for retirement purposes.

(Renumbered from Sec. 24.0313 and amended 12-8-1976 by O-11964 N.S.)

§24.1005 Continuity of Service

The following shall not be considered as breaking the continuity of service:

- (a) A temporary layoff because of an illness or for purposes of economy, suspension or dismissal followed by reinstatement or reemployment within one year.

- (b) A leave of absence followed by reinstatement or reemployment within one year after the termination of the leave of absence.
- (c) A resignation to enter, followed by entrance into, the armed forces of the United States, followed by reemployment by the City within six months after the termination of such service.
- (d) Resignation of a member who has elected in writing to come within the provisions of Sections 24.0206 and 24.0306, followed by reemployment before withdrawal of any accumulated contributions.

(Amended 2-25-1997 by O-18383 N.S.)

§24.1010 Compliance with Certain Internal Revenue Code Provisions

- (a) Internal Revenue Code Section 401(a)(17)
 - (1) In accordance with the Omnibus Budget Reconciliation Act of 1993 (OBRA '93), except as provided herein, the annual compensation taken into account under the Retirement System for any purpose, including but not limited to contributions and/or benefits, shall not exceed \$150,000 or such larger amount as allowed by Internal Revenue Code section 401(a) (17).
 - (2) The \$150,000 limit referenced in paragraph (a)(1) above shall only apply for years beginning after December 31, 1995, and shall only apply to individuals who first become members of the Retirement system in plan years beginning on and after January 1, 1996.
 - (3) Individuals who become members of the Retirement system before plan years beginning on and after January 1, 1996, shall not be subject to the limits of Internal Revenue Code section 401(a)(17). Instead, pursuant to Section 13212(d)(3)(A) of OBRA '93, and the regulations issued thereunder, the annual compensation in effect under Internal Revenue Code section 401(a) (17) shall not apply to any such member in any year.
- (b) Internal Revenue Code Section 415
 - (1) Notwithstanding any other provisions of Article IX of the San Diego City Charter or of this article, the benefits payable to any person who becomes a plan member on or after January 1, 1990, shall be subject to the limitations set forth in Section 415 of the Internal Revenue Code.

- (2) The “grandfather” election in Section 415(b)(10) of the Internal Revenue Code is hereby made.
- (3) The benefits payable to any person who became a plan member prior to January 1, 1990, shall be subject to the greater of the following:
 - (A) The limitations set forth in Section 415 of the Internal Revenue Code; or
 - (B) The accrued benefit of the member (determined without regard to any amendment made after October 14, 1987), as provided in Section 415(b)(10)(A) of the Internal Revenue Code.
- (4) If compliance with the provisions of Internal Revenue Code section 415 and related sections would result in a lower level of retirement benefits for members on or after January 1, 1990 than for members prior to that date, then the Council shall provide, by ordinance, an alternative means of maintaining for such members the level of benefits in effect for members as December 31, 1989.
- (5) If any of the limitations of Section 415 of the Internal Revenue Code should be repealed, the provisions of this section shall be deemed repealed to the same extent.
- (6) All references to Section 415 of the Internal Revenue Code are to the language in Section 415 in effect when this Municipal Code is adopted including any amendments thereafter. For purposes of Section 415 testing, the limitation year shall be based on a fiscal year beginning on July 1 and ending on June 30.
- (7) Nothing contained in this section shall limit the City Council from modifying benefits to the extent such modifications are permissible by the City Charter and applicable state and federal law.

(Amended 3–19–2001 by O–18930 N.S.)

§24.1011 Reciprocal Benefits with the Public Employees’ Retirement System

(a) Reciprocity

For the purpose of expediting the conclusion of reciprocal agreements with the Public Employees’ Retirement System (“PERS”) or other public agencies maintaining independent retirement systems, and to avoid problems in

interpretation that may arise from a great variation in reciprocal provision, the Board of Administration for PERS recommends the adoption of the reciprocal provisions set forth in paragraph (b) of this section into the retirement ordinances or plans of public agencies desiring to enter into a reciprocal agreement with PERS or other public agencies. In accordance with this recommendation, the Board of Administration for the City Employees Retirement System has adopted the Uniform Reciprocal provisions contained in paragraph (b) of this section.

(b) Uniform Reciprocal Provisions

The purpose of these reciprocal provisions is to extend to the members of other public agency retirement systems (hereinafter "reciprocal system") which adopt similar reciprocal provisions into their retirement ordinances or plans pursuant to Sections 20351, 20353, 31840.2 and 45310.5 of the Government Code, and who by contract agree to extend the benefits thereof to this System, the following rights in this System, provided such Member enters into employment under this System or the reciprocal System within six months of terminating his employment under such other or this System:

- (1) Notwithstanding any provisions of this plan or a reciprocal system plan in the matter of vesting, a member whose movement between systems occurs as herein specified shall have the right to elect to leave his accumulated contributions on deposit irrespective of the amount of such contributions or the length of service credited to him.
- (2) The age of entry for a person entering this system for purposes of fixing member contribution rates from a reciprocal system shall be his age at entry into such reciprocal system.
- (3) The average monthly salary during any period of service as a member of a reciprocal system shall be considered compensation earnable by a member of this system for purposes of computing final compensation for such member, provided he retires concurrently under both systems and is credited with such period of service under the reciprocal system at the time of retirement.
- (4) Service, solely for purposes of meeting minimum service qualifications for benefits and retirement allowances under this system, shall also include service rendered as an officer or employee of a reciprocal system if the salary for such service constitutes compensation earnable by a member of this system.

- (5) A member shall be retired for disability and receive a retirement allowance based on the service credited to him at the time of retirement during any period in which he receives a disability retirement allowance under a reciprocal system; provided, that such allowance shall not exceed an amount which when added to the allowance paid under the reciprocal system equals the allowance which would be paid for a nonindustrial disability if all the member's service had been credited under the reciprocal system; and provided further, that such allowance shall in no event be less than an annuity which is the actuarial equivalent of the member's contributions, whether or not the disability is for industrial reasons.
- (6) The death benefit for a member who dies from nonindustrial causes as a member of a reciprocal system shall not exceed an amount which when added to the death benefit paid for such member under the reciprocal system equals the maximum death benefit payable under that system; provided, however, that such death benefit shall be at least the amount of the accumulated contributions; and, provided further, that if death is caused by industrial injury or disease in the reciprocal system the death benefit shall be the amount of the member's accumulated contributions.
- (7) The governing body of this system shall on the request of a reciprocal system supply information and data necessary for administration of such system as it is affected by membership in and service credited under this system.
- (8) Interpretation of these provisions shall be made with reference to interpretations that have been made relative to the Public Employees' Retirement System - 1937 Act County Employees' Retirement reciprocal provisions upon which they are based.
- (9) These provisions shall apply only to a member whose termination and entry into employment resulting in a change in membership from this system to such other system or from such other system to this system occurred after such acceptance by the Board after the effective date specified in the agreement; provided, however, that provisions relating to computation of final compensation shall apply to any other member is such provision would have applied had the termination and entry into employment occurred after such acceptance or determination by a system's governing board.

- (10) Rights under this System shall be modified as necessary to conform to amendments to the Public Employees' Retirement Law or the County Employees' Retirement Law of 1937 as provided in Section 20351 of the Government Code.

(Amended 11-10-1998 by O-18600 N.S.)

§24.1012 Retirement Allowance of Fixed Pension Retirees

Effective July 1, 1992, all special class safety members and their surviving spouses who are presently receiving a widow/widower's fixed pension pursuant to applicable provisions of this Retirement System shall have their fixed pensions raised to \$350.00 per month.

(Amended 7-12-1993 by O-17938 N.S.)

§24.1013 Early Retirement Incentive Program

(a) Definition

The Early Retirement Incentive Program is a program offering temporary incentives to eligible employees to encourage early retirement on a voluntary basis.

(b) Purposes

The Early Retirement Incentive Program has been established to address the severe budget constraints faced by The City of San Diego in Fiscal Year 1992–1993. The purposes of the Early Retirement Incentive Program are as follows:

- (1) To reduce expenditures for personnel employed by the City; and
- (2) To provide voluntary financial incentives to encourage eligible employees to retire earlier from employment and to minimize forced lay offs that would otherwise be required; and
- (3) To enable and encourage department heads to replace only where needed those employees eligible and electing to participate in Early Retirement Incentive Program in order to control the level of expenditures for personnel while maintaining the proper level of performance of duties.

(c) Eligibility

Any employee of The City of San Diego who is a general or safety member of the Retirement System who currently meets the following age and service requirements effective September 1, 1992, until January 4, 1993, will be eligible to participate in the Early Retirement Incentive Program:

- (1) General members with 10 or more years of creditable service who are age 62; or
- (2) General members with 20 or more years of creditable service who are age 55; or
- (3) General members enrolled prior to February 19, 1991, who are currently age 65 or over regardless of years of creditable service; or
- (4) Safety members with 10 or more years of creditable service who are age 55; or
- (5) Safety members with 20 or more years of creditable service who are age 50.

(d) Requirements

- (1) Participation in Early Retirement Incentive Program is wholly voluntary.
- (2) Any eligible employee who wishes to participate in Early Retirement Incentive Program shall submit a written application to the Retirement Administrator no later than January 4, 1993. All applications must be received at the Retirement office by 5:00 p.m., on January 4, 1993.
- (3) Any eligible employee electing to participate in Early Retirement Incentive Program shall retire no later than January 5, 1993.
- (4) Any eligible employee electing to participate in Early Retirement Incentive Program shall agree to select option 3 covering yearly installments to receive payment for accrued unused sick leave or annual leave set forth in Administrative Regulation No. 95.90, section 4.3a(3), of the Administrative Regulations Manual for The City of San Diego with the express modification that the first installment will be due on July 1, 1993 and subsequent installments due on July 1, 1994 and July 1, 1995.

- (5) Any increase to the unfunded liability of the Retirement System caused by the Early Retirement Incentive Program will be paid by The City of San Diego through an increase in the City's contribution rate to the Retirement System.

(e) Benefits

- (1) Eligible employees, other than those eligible employees age 65 or over with fewer than ten years of continuous service, electing to participate in the Early Retirement Incentive Program will receive an additional two years of service credit. Eligible employees age 65 or over with fewer than ten years of continuous service will receive additional service credit of up to two years to be determined in the proportion that their years of service bears to ten years of continuous service.
- (2) The additional service credit offered under Early Retirement Incentive Program will also be included in the calculations for the annual supplemental benefit described in SDMC section 24.0404.
- (3) The additional service credit offered under Early Retirement Incentive Program will also be included in the percentage calculations for the City-Sponsored Group Health Insurance for Eligible Retirees set forth in SDMC section 24.1204(b).

(f) Limitations

The early retirement benefits under this section will be limited by Section 415 of the Internal Revenue Code of 1986, as amended from time to time, and no early retirement benefits under this section will be effective if they have an adverse effect on the tax qualified status of the retirement system under Section 401 of the Internal Revenue Code of 1986, as amended from time to time.

("Early Retirement Incentive Program" added 11-2-1992 by O-17856 N.S.)

§24.1014 Exemption from Process; Assignments Prohibited

The right of a person to a pension or Annuity or a retirement allowance, to the return of contributions, the pension, Annuity or retirement allowance itself, any optional benefit, any other right accrued or accruing to any person under the provisions of this section and the moneys in the fund create under this section shall not be subject to execution, garnishment, attachment or any other process of any court except to the extent permitted by California Code of Civil Procedure section 704.110, and shall be

unassignable except as in this section specifically provided.

(“Exemption from Process; Assignments Prohibited” added 2-25-1997 by O-18383 N.S.)